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UNITED STATES OF AMERICA,
Plaintiff,
v.
DEVON CHRISTOPHER WENGER,
Defendant.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

Case No. 23-cr-00269-JSW-3

**ORDER DENYING MOTIONS FOR
JUDGMENT OF ACQUITTAL**

Re: Dkt. Nos. 583, 610

This matter comes before the Court upon consideration of the motions for judgment of acquittal filed by Defendant Devon Christopher Wenger (“Wenger”). The Court has considered the parties’ papers, relevant legal authority, and the record in this case, including the oral argument on Wenger’s initial motion, and it HEREBY DENIES the motions.

BACKGROUND

On August 16, 2023, the grand jury returned an Indictment charging Morteza Amiri (“Amiri”), Eric Rombough (“Rombough”), and Wenger with conspiracy against rights, in violation of 18 U.S.C. section 241. According to the Indictment, from at least February 2019 through at least March 2022, Amiri, Rombough, and Wenger conspired with one another “to injure, oppress, threaten, and intimidate residents of Antioch, California and the Northern District of California in the free exercise and enjoyment of rights secured to them by the Constitution or laws of the United States, that is, to be free from the use of unreasonable force by a law enforcement officer[.]” (Indictment ¶ 90 (“Count 1”)). The Government also charged Wenger with one count of deprivation of rights under the color of law, in violation of 18 U.S.C. section 242. That charge was based on an incident that occurred on October 26, 2021, involving an individual identified as D.S. (“Count 8”).

1 At trial, the Government presented testimony from the Antioch Police Department's
2 ("APD") Chief of Police, Joseph Vigil, former APD Captain Anthony Morefield, former APD
3 Officers Shane Col and Matthew Contreras, Rombough, law enforcement officers involved in the
4 investigation, and from two victims. The Government also presented use of force reports,
5 photographs, videos taken by bystanders, videos from APD officer body worn cameras, and a host
6 of text messages between and among the Defendants. By way of example only, Wenger sent a
7 text to Amiri and Wenger asking them to "f*** this guy in the ass" and sent them a photo of the
8 suspect. Rombough responded "deal." Amiri, who worked with a canine named Purcy,
9 responded, "i'll bite em." (Ex. 107 at 3, 5.) The Government also introduced a text chain between
10 Wenger and Amiri regarding an incident where Pittsburg Police Department Officers activated
11 body cameras during an encounter with a suspect. Amiri wrote Wenger that they would have
12 "f***ed" the individual up more if the body worn cameras were not activated. Wenger responded
13 by emphasizing Amiri's message and stating that is why he does not like body worn cameras.
14 (Ex. 255 at 61-64.)

15 The Government also presented testimony about Wenger's involvement in an investigation
16 relating to a robbery at a Spirit Halloween Store in October 2019 and a subsequent encounter with
17 the suspects. C.Y. testified that Wenger pushed her up against a wall, and she heard her arm
18 "crack[]." C.Y. also testified that Wenger slammed her sister's head into a police car. (Tr. at
19 268:9-276:10.) The Government introduced Wenger's incident and use of force reports. The
20 Government also introduced a bystander video of the encounter, which did not align with
21 Wenger's reports. (Ex. 651 (Incident Report), Ex. 667 (Use of Force Report), Ex. 669 (bystander
22 video).) Wenger called APD Officer Erik Nilsen, who provided testimony favorable to Wenger
23 about the encounter with C.Y. and her sister. (Tr. at 1224:7-10, 1232:7-1239:1.)

24 On September 15, 2025, the parties filed briefs on Wenger's initial motion for judgment of
25 acquittal, and the Court heard oral argument the following day. At the conclusion of that hearing,
26 the Court granted Wenger's motion for judgment of acquittal on Count 8. The Court reserved
27 ruling on Count 1. (Tr. at 1283:6-12.)

28 On September 18, 2025, the jury found Wenger guilty on Count 1. The Court will address

1 additional facts as necessary in the analysis.

2 ANALYSIS

3 A. Applicable Legal Standard.

4 “A defendant may move for a judgment of acquittal, or renew such a motion, within 14
5 days after a guilty verdict or after the court discharges the jury, whichever is later.” Fed. R. Crim.
6 P. 29(c)(1). “It is well settled that a district court does not have unlimited discretion in resolving a
7 Rule 29(c) motion for judgment of acquittal.” *United States v. Dreitzler*, 577 F.2d 539, 545 (9th
8 Cir. 1978). “[T]he relevant question is whether, after viewing the evidence in the light most
9 favorable to the prosecution, *any* rational trier of fact could have found the essential elements of
10 the crime beyond a reasonable doubt.” *Jackson v. Virginia*, 443 U.S. 307, 319 (1979) (emphasis
11 in original).

12 The answer to that question involves a two-step inquiry. “First, a reviewing court must
13 consider the evidence presented at trial in the light most favorable to the prosecution.” *United*
14 *States v. Nevils*, 598 F.3d 1158, 1164 (9th Cir. 2010). Second, a reviewing court “must determine
15 whether this evidence, so viewed, is adequate to allow ‘*any* rational trier of fact [to find] the
16 essential elements of the crime beyond a reasonable doubt.’” *Id.* (quoting *Jackson*, 443 U.S. at
17 319). In *Nevils*, the court explained the “second step protects against the rare occasions in which
18 ‘a properly instructed jury may … convict even when it can be said that no rational trier of fact
19 could find guilt beyond a reasonable doubt.’” *Id.* (quoting *Jackson*, 443 U.S. at 317).

20 B. The Court Denies the Motions.

21 In order to convict Wenger on Count 1, the jury was required to find (1) an agreement
22 between two or more persons to injure, oppress, threaten, or intimidate one or more persons in the
23 free exercise or enjoyment of any right or privilege secured to them by the Constitution or laws of
24 the United States; and (2) that Wenger joined that agreement knowing its purpose and intending to
25 help accomplish that purpose. *See, e.g., United States v. Gonzalez*, 906 F.3d 784, 792 (9th Cir.
26 2018).

27 Wenger argues that the Court’s ruling granting his motion on Count 8 demonstrates the
28 evidence of conspiracy was insufficient and argues that “it would be inconsistent to uphold a

1 conspiracy conviction when the predicate event failed.” (Renewed Mot. at 11:22-23.) The Court
2 finds this argument unpersuasive, because a conviction for conspiracy “does not require
3 completion of the intended underlying offense.” *United States v. Iribar*, 564 F.3d 1155, 1161 (9th
4 Cir. 2009).

5 Wenger also argues that the Government’s evidence is indicative only of vulgar banter,
6 isolated bluster, speculation, and the fact that the defendants associated with one another. Unlike
7 Rombough, Wenger did not explicitly state he violated people’s civil rights. (See Ex. 102 at
8 2188.) However, a tacit agreement “may be inferred from the conspirators’ conduct as well as
9 other circumstantial evidence.” *Gonzalez*, 906 F.3d at 792. The Court also instructed the jury that
10 “[i]t is not enough, ..., that [the conspirators] simply met, discussed matters of common interest,
11 acted in similar ways, or perhaps helped one another. (See Dkt. No. 587, Final Jury Instructions,
12 Instruction 18.) In addition, the Court instructed the jury that

13 one who has no knowledge of a conspiracy, but happens to act in a
14 way which further some object or purpose of the conspiracy, does not
15 thereby become a conspirator. Similarly, a person does not become a
conspirator merely by associating with one or more persons who are
conspirators, nor by merely knowing that a conspiracy exists.

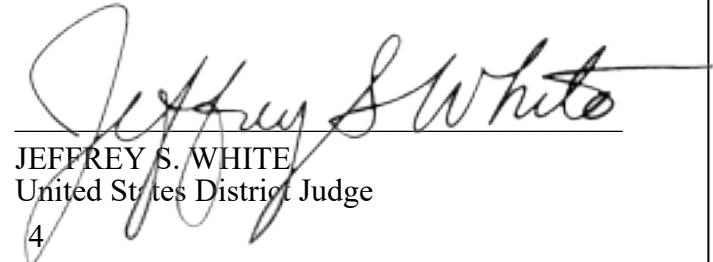
16 (*Id.*)

17 Examining the evidence in the light most favorable to the Government, both before and
18 after Nilsen testified, the Court concludes it was sufficient for the jury and any rational fact finder
19 to find Wenger guilty on Count 1. When the Court considers Wenger’s arguments about why the
20 evidence is more indicative of innocence, the Court also is not persuaded that this is one of the
21 “rare occasions” where that evidence “is such that all rational fact finders would have to conclude
22 that the evidence of guilt fails to establish every element of the crime beyond a reasonable doubt.”
23 *Nevils*, 598 F.3d at 1165.

24 Accordingly, the Court DENIES Wenger’s motions for judgment of acquittal.

25 **IT IS SO ORDERED.**

26 Dated: November 26, 2025


27 JEFFREY S. WHITE
28 United States District Judge
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